IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.2490 OF 2003

Airworks (I) Engineering Pvt.Ltd. ...Petitioner.
Vs.
Maharashtra General Kamgar Mahasangh & Anr. ...Respondents.
....
Mr. A.D. Shetty for the Petitioner.
Mr. N.M. Ganguli for the Respondents.
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**CORAM : DR.D.Y.CHANDRACHUD, J.**

**July 24, 2006.**

**ORAL JUDGMENT :**

The Petitioner is engaged in providing Aircraft and Helicopter Maintenance Services to airline companies in the private and public sectors and operates chartered air transport services under the approval of the Director General of Civil Aviation of the Government of India. On 20th December 1997, a Charter of Demands was raised on behalf of the workmen of the Petitioner by the Bharatiya Kamgar Karmachari Mahasangh (BKKM). Conciliation proceedings were held before the Assistant Labour Commissioner. Upon those proceedings ending in failure, the industrial dispute was referred to the Industrial Tribunal for adjudication in a reference under Section 10 of the Industrial

Disputes Act, 1947. The reference was in regard to the Charter of Demands which pertained inter alia to the classification, gradation, basic wage scales, dearness allowance, city travelling allowance and 14 other demands. During the pendency of the reference, the Union which prosecuted the proceedings filed a purshis, Exh.U-5 stating that it had lost its membership in the establishment of the employer, and that the reference be disposed of as "not pressed". By an order dated 12th September 2001, the Industrial Tribunal accordingly disposed of the reference as "not pressed". On 11th October 2002, the First Respondent moved an application, Restoration Application (IT) No.2 of 2002, seeking a restoration of the proceedings, purportedly under Rule 26(2) of the Industrial Disputes Bombay Rules, 1957. The Petitioner resisted the application for restoration. The Industrial Tribunal by its order dated 16th August 2003 restored the reference. That order has been challenged in these proceedings under Article 226 of the Constitution.

2. In support of the application for restoration, the First Respondent pleaded that after a reference for adjudication was made to the Industrial Tribunal, the workmen were assured by the

earlier Union that their cause was being duly and properly pursued. However, though two years elapsed, no further steps had been taken and the workmen once again approached the Union. When the workmen realised that the earlier Union was not acting in their interest and having lost their faith in the earlier Union, the workers joined the applicant Union. Enquiries were thereafter caused to be made upon which it was revealed that the earlier Union had filed a purshis that led to the disposal of the reference on 12th September 2001. The First Respondent stated that it gathered this information in July 2002. A certified copy of the order of the Industrial Tribunal was received on 4th October 2002. Thereafter immediately an application for restoration was filed on 11th October 2002. The First Respondent pleaded that the reference is between the employer and its workmen. The Union was concerned with the reference in a representative capacity. The reference was disposed of on account of the default on the part of the earlier Union in espousing the cause of its workmen who had all along believed that their cause was being looked after and handled by the Union. In these circumstances, the First Respondent moved an application for the restoration of the reference. The application was allowed by the Industrial Tribunal which was of the view that

the restoration of the reference was in the interests of justice. The Industrial Tribunal held that an award must involve a determination of an industrial dispute or a question relating thereto. No such determination had taken place at all. A determination can arise when there is an adjudication of a dispute on merits. There was no occasion for the Tribunal to do so and hence, the earlier order did not amount to an award as contemplated by law. In these circumstances, the reference was restored.

3. Section 2(b) of the Industrial Disputes Act, 1947 defines the expression “award” to mean an interim or a final determination of any industrial dispute or of any question relating thereto by any labour Court, Industrial Tribunal or National Industrial Tribunal and to include an arbitration award made under Section 10-A. Before a decision of a Labour Court or of an Industrial Tribunal can be regarded as an award, there has to be a determination of an industrial dispute. A determination involves an act of adjudication. The determination has to be of an industrial dispute. Consequently, the determination that is contemplated and envisaged in Section 2(b) is an adjudication of an industrial dispute. In the present case, the order of the Tribunal dated 12th

September 2001 clearly proceeded on an inability of the earlier Union to proceed with the reference as that Union had lost its membership in the establishment of the employer. The reference was disposed of as "not pressed". The order of 12th September 2001 may have been styled by the Tribunal as an award, but that is not conclusive of whether it is an award within the meaning of Section 2(b). An order of the Labour Court or Industrial Tribunal which does not contain a determination of an industrial dispute, does not constitute an award within the meaning of Section 2(b).

4. In **Cox and Kings (Agents) Limited vs. Their Workmen**,[1] the Labour Court had in its order dated 27th September 1972 held that no industrial dispute existed which was a *sine qua non* for the validity of a reference and the exercise of further jurisdiction by the Court. The Supreme Court held that an order of that nature did not amount to an award inasmuch as there was no determination of an industrial dispute on merits. The Supreme Court held thus :

> "The definition of "award" in S.2(b) falls in two parts. The first part covers a determination, final or interim, of any industrial dispute. The second part takes in a determination of any question relating to an industrial

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> dispute. But the basic postulate common to both the parts of the definition, is the existence of an industrial dispute, actual or apprehended. The "determination" contemplated by the definition is of the industrial dispute or a question relating thereto, on merits."

In the case before the Supreme Court it was held that the order of the Labour Court did not meet the test of an award under clause (b) of Section 2 since, before it could be held to be an award, a determination must be (i) an adjudication of a question or point relating to an industrial dispute which has been specified in the order of the reference or is incidental thereto; and (ii) such an adjudication must be one on merits. The Supreme Court held in **Workmen, Williamson Magor & Co. vs. Williamson Magor & Co.**,[2] that Industrial Tribunals are intended to adjudicate industrial disputes between the management and the workmen, settle them and pass effective awards in such a way that industrial peace between employers and employees may be maintained. Section 11(1) empowers the Labour Courts and the Industrial Tribunals to follow such procedure as they may think fit. Consistent with the provisions of Section 11 the Industrial Tribunals should not be constrained by formal rules or procedure and must so direct

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themselves as would advance the cause of an effective and complete resolution of the disputes which are raised before them for adjudication.

5. The application before the Industrial Tribunal in the present case proceeded on the mistaken belief that it was an application filed under Rule 26 of the Industrial Disputes Bombay Rules. Rule 26(2) refers to a situation where an ex-parte order is passed by the Industrial Tribunal. In the present case, undoubtedly the order which was passed by the Tribunal on 12th September 2001 was not ex-parte since it was at the request of the Union that the reference was disposed of as the Union had lost majority. That however, would not deprive the Industrial Tribunal of its power to restore the reference in the interests of justice because so long as an industrial dispute exists or is apprehended, the power of the appropriate Government to make a reference to adjudication and of the jurisdiction of the Industrial Tribunal to adjudicate upon such a reference cannot be denied. The expression “industrial dispute” under Section 2(k) is defined to mean any dispute inter alia between employers and the workmen which is connected with the employment or non-employment or the terms of employment or

with the conditions of labour of any person. The earlier Union was espousing the cause of the workmen of the establishment. The mere fact that the earlier Union had lost its majority in the establishment would not result in the industrial dispute ceasing to exist. Therefore, the jurisdiction of the Industrial Tribunal to proceed with the reference would continue to subsist so long as the industrial dispute had not ceased to exist. In these circumstances, the Industrial Tribunal was not in error in restoring the reference.

6. However, on behalf of the Petitioner it has been submitted that this Court may specifically clarify that all the rights and contentions of the parties are kept open including inter alia the contention of the Petitioner that (i) The office bearers who sought to espouse the cause of the workmen were not authorised to do so; and (ii) In view of the several benefits that have been granted to the workmen, the reference should be disposed of. Counsel further submitted that the Petitioner also seeks to canvass the issue of which is the appropriate Government within the meaning of Section 2(a) at the appropriate stage before the Tribunal. It is needless to state that all the rights and contentions are kept open

since the only issue before this Court is whether the Industrial Tribunal was justified in passing an order of restoration. For the aforesaid reasons, I am of the view that the order passed by the Industrial Tribunal is correct and proper and that it does not justify interference of this Court under Article 226 of the Constitution. The petition is dismissed.

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